No. 77-1090

In the Supreme Court of the United States

OCTOBER TERM, 1977

FOUNDING CHURCH OF SCIENTOLOGY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a-21a) is not yet reported. The opinion of the district court (Pet. App. 30a-48a) is reported at 436 F. Supp. 689.

JURISDICTION

The judgment of the court of appeals was entered on December 1, 1977 (Pet. App. 1a-2a), and a petition for rehearing was denied on January 4, 1978 (Pet. App. 49a). The petition for a writ of certiorari was filed on February 2, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the warrant authorizing the search of petitioner's premises was unconstitutionally overbroad.

STATEMENT

1. On July 8, 1977, agents of the Federal Bureau of Investigation executed a search warrant on the premises of the Assistant Guardian's Office of petitioner, the Founding Church of Scientology of the District of Columbia.[1] The search warrant had been issued by a magistrate of the United States District Court for the District of Columbia on the basis of a 33-page affidavit that detailed the results of an investigation into charges that various officials of the Church had conspired to and did steal government documents and had then conspired to and did obstruct justice by concealing these crimes during a grand jury investigation into burglaries of the United States Courthouse in the District of Columbia. The affidavit also set forth probable cause to believe that a large number of documents evidencing these crimes would be found in petitioner's files.

The search warrant identified 161 specific documents and categories of documents that were subject to seizure.[2]

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[1]The Founding Church of Scientology is the District of Columbia branch of the Church of Scientology (hereinafter referred to as "the Church"). Searches were also conducted on the same day at the Church's offices in Los Angeles, California, on the basis of identical affidavits. In reliance upon the presumed collateral estoppel effect of the ruling in the instant case, the United States District Court for the Central District of California ordered return of the property seized as a result of those searches. *United States* v. *Various Documents Seized from the Church of Scientology of California and Cedar-Sinai Complex*, No. CV-77-2565 MML, decided August 8, 1977. The government has appealed this order to the United States Court of Appeals for the Ninth Circuit (No. 77-3828).

[2]The 161 items were documents alleged to have been stolen from the United States Government, documents relating to the subornation of false grand jury testimony to cover up burglaries of the offices of the United States Attorney for the District of Columbia, and documents concerning plans by the Church to infiltrate government agencies and steal government files.

In addition, Item 162 of the warrant, which was patterned after a similar clause approved by this Court in *Andresen* v. *Maryland*, 427 U.S. 463, 481-482, authorized seizure of:

> Any and all fruits, instrumentalities and evidence (at this time unknown) of the crimes of conspiracy, obstruction of justice and theft of government property in violation of 18 U.S.C. §§371, 1503, and 641 which facts recited in the accompanying affidavit make out.

App. 9.[3]

2. The search warrant affidavit submitted to the magistrate outlined in substantial detail the information uncovered by the F.B.I.'s investigation into the burglaries of the United States Courthouse (App. 11-43), much of which had been provided by Michael J. Meisner, who had been a member of the Church's Guardian's Office hierarchy and had acted in a supervisory capacity over its information gathering branch until June 1976. According to Agent Robert Tittle, Meisner and Gerald Wolfe, another member of the Church's Guardian's Office, had been discovered in the United States Courthouse late at night on June 11, 1976, in possession of forged I.R.S. credentials (*id.* at 24-26). Although the two men were allowed to leave, a warrant was subsequently issued for Meisner's arrest. After remaining a fugitive for more than a year, Meisner surrendered on June 20, 1977, and agreed to cooperate with the government (*id.* at 31).

During the next two weeks, Meisner provided detailed information about criminal activities that members of the Church had planned and executed, including infiltration of the Internal Revenue Service, the Drug Enforcement

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[3]"App." refers to the separately-bound appendix containing the search warrant and accompanying affidavit, copies of which have been lodged with the Clerk of this Court.

Administration, and the Tax Division of the Department of Justice in an effort to obtain all documents these agencies possessed regarding the Church (App. 14-19). Meisner revealed that, once in these locations, the Church members found and copied documents of interest to the Church and delivered them to him (*id.* at 18-19). Meisner then filed one copy of the stolen documents in the Church's office in Washington, D.C., and sent three copies to the Church's office in Los Angeles, California (*id.* at 22-23).[4]

Through the efforts of a Church member surreptitiously placed in the Justice Department, Meisner learned in February 1976 that other documents of interest to the Church were located in the office of an Assistant United States Attorney in the United States Courthouse in the District of Columbia (App. 18-19). Thereafter, Meisner and Wolfe, using false I.R.S. identification, entered the courthouse on three occasions after normal business hours (*id.* at 21-25). On the first two occasions, they entered the Assistant United States Attorney's office by using stolen keys and obtained and copied the desired documents. As noted above, on their third illegal entry Meisner and Wolfe were confronted and questioned by the F.B.I. agents (*id.* at 25).

Following their encounter with the F.B.I., Meisner and Wolfe were directed by their superiors in the Guardian's Office in Los Angeles to prepare fabricated stories to tell the authorities in the event that they were again interrogated (App. 26-30). Wolfe complied with this order, telling the grand jury that he had no connection with the Church and had been in the courthouse solely to

[4]The affidavit also explained the Church's elaborate filing system (App. 32-42).

use the law library for personal research (*id.* at 29-30). Wolfe pleaded guilty on May 13, 1977, to the false use of a government seal, in violation of 18 U.S.C. 1017. Meisner also frustrated the investigation by fleeing to Los Angeles, where he disguised his appearance, received regular briefings on the progress of Wolfe's prosecution, and enjoyed access to the stolen government documents in the Church's files (*id.* at 29-30, 32-41). In April 1977, after Meisner announced that he was tired of remaining a fugitive, the Church attempted to prevent his surrender by placing him under 24-hour guard and by physically restraining him, but he eventually escaped and returned to Washington (*id.* at 31-31).

3. Following execution of the warrant and seizure of various documents, the Church moved, pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure, for return of the property taken from its offices. The district court granted the motion, holding that, despite the fact that the affidavit (which was incorporated into the warrant) described in exhaustive detail the documents that could be seized, the inclusion of Item 162 transformed the warrant into a "general warrant," prohibited by the Fourth Amendment (Pet. App. 30a-48a). The court of appeals unanimously reversed, finding that the warrant and "supporting documents went into great particularity not only as to the relevant documents and their location, but also as to the particular offenses that the property sought was designed to prove" (Pet. App. 12a). The court below concluded that, "[p]roperly construed[,] the warrant only authorizes a search and seizure of evidence of the particular conspiracies to steal government property and to obstruct justice that are described in the 'accompanying affidavit' " (Pet. App. 7a), and, indeed, that the language of Item 162 was more limited in scope

than a similar provision of the warrant upheld in *Andresen* v. *Maryland*, 427 U.S. 463, 478-484 (*id.* at 14a).[5]

ARGUMENT

Petitioner's sole contention is that the warrant to search its premises was unconstitutionally overbroad because of the inclusion of Item 162. This claim amounts to nothing more than the application of settled Fourth Amendment principles to the particular facts of this case and presents no significant legal question warranting review by this Court. See Pet. App. 29a (statement of Robinson, J., explaining why he does not request a vote on the suggestion for rehearing *en banc*). Moreover, the court of appeals correctly concluded that the challenged portion of the warrant was virtually identical to that recently upheld in *Andresen*.

Andresen involved a state criminal investigation of a lawyer suspected of having engaged in a fraudulent real estate transaction involving a piece of land known as Lot

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[5]On January 4, 1978, the court of appeals unanimously denied the Church's petition for rehearing and suggestion of rehearing *en banc* (Pet. App. 24a-25a, 49a). Contrary to petitioner's contention (Pet. 9), we do not read Judge Wright's statement explaining his vote to deny rehearing *en banc* to suggest that he believes that this case is worthy of review by this Court. Rather, Judge Wright was legitimately concerned, in light of the severe frustration of the grand jury's investigation caused by this litigation, not to bring about further unnecessary delay in the filing and disposition of the Church's petition for a writ of certiorari. Because of the stay orders issued by the district court and the court of appeals, the government has not yet been permitted to present the fruits of the seizure to the grand jury, some seven months after the search and seizure occurred. This inhibition of the grand jury's functions is of course inconsistent with the principles announced in *United States* v. *Calandra*, 414 U.S. 338. The grand jury investigating the crimes alleged in this case was empanelled on October 13, 1976, and its term will therefore expire on April 12, 1978. See Rule 6(g), Fed. R. Crim. P.

13T. The investigators, concluding that there was probable cause to believe that Andresen had committed the crime of false pretenses in his handling of the land transaction and that specified documents evidencing the crime would be found in his offices, obtained warrants to search both his law office and the office of his real estate corporation. The warrants, however, while containing a detailed list of the documents to be seized (those relating to the sale and conveyance of Lot 13T), also authorized the seizure of "other fruits, instrumentalities and evidence of crime at this [time] unknown" (427 U.S. at 479). The Court rejected the claim that this phrase should be read in isolation, without reference to the preceding sentences in the warrant, and that the omnibus phrase transformed an otherwise valid warrant into a forbidden "general warrant." Rather, the Court concluded that "[t]he 'other fruits' clause is one of a series that follows the colon after the word 'Maryland.' All clauses in the series are limited by what precedes that colon, namely, 'items pertaining to . . . lot 13, block T.' The warrants, accordingly, did not authorize the executing officers to conduct a search for evidence of other crimes but only to search for and seize evidence relevant to the crime of false pretenses and Lot 13T" (427 U.S. at 481-482).

The court of appeals applied precisely the same reasoning to sustain the warrant here, which was deliberately modeled after the clause at issue in *Andresen*. As the court below observed, the language of Item 162, even if abstractly susceptible of a broad reading, was narrowed and particularized by the language of the affidavit, which was incorporated into the warrant.[6] Thus viewed, Item

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[6]A search warrant of course may "incorporate[ ] by express reference the underlying affidavit attached thereto which quite specifically details the records and documents to be obtained in the search." *United States* v. *Womack*, 509 F. 2d 368, 382 (C.A. D.C.), certiorari denied, 422 U.S. 1022.

162 plainly covered (Pet. App. 7a) any and all "evidence of the particular conspiracies to steal government property and to obstruct justice that [were] described in the 'accompanying affidavit.'" This common sense reading (*United States* v. *Ventresca,* 380 U.S. 102, 108-109) is fully consistent both with *Andresen* and with the reasonable conclusion that Item 162 was intended and understood simply to mirror the affidavit upon which it is based. See *United States* v. *Freeman,* 532 F. 2d 1098, 1100 (C.A. 7); *United States* v. *Womack,* 509 F. 2d 368, 382 (C.A. D.C.), certiorari denied, 422 U.S. 1022; *Taylor* v. *Minnesota,* 466 F. 2d 1119, 1121 (C.A. 8), certiorari denied, 410 U.S. 956; *United States* v. *Honore,* 450 F. 2d 31, 33 (C.A. 9), certiorari denied, 404 U.S. 1048.[7]

Petitioner seeks to avoid the application of these settled principles, however, by contending (Pet. 11-16) that the search somehow violated its First Amendment rights and those of its members.[8] Even assuming that the Church is a

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[7]Indeed, Item 162 added nothing to the agents' authority to seize documents that were evidence of a crime. It did not broaden the scope of the search, and even without the final clause the agents could have seized incriminating items, not specifically mentioned in the warrant, if they unexpectedly came across them during the search. See, *e.g., United States* v. *Bills,* 555 F. 2d 1250, 1251 (C.A. 5); *United States* v. *Davis,* 542 F. 2d 743, 745 (C.A. 8), certiorari denied, 429 U.S. 1004; *United States* v. *Schwartz,* 535 F. 2d 160, 163 (C.A. 2), certiorari denied, 430 U.S. 906; *United States* v. *Teller,* 412 F. 2d 374, 379 (C.A. 7), certiorari denied, 402 U.S. 949. The clause also was little different from the "including but not limited to" language occasionally used in search warrants. See, *e.g., United States* v. *Fuller,* 441 F. 2d 755, 760 (C.A. 4), certiorari denied, 404 U.S. 830.

[8]Petitioner also appears to argue (Pet. 17-19) that when a large volume of documents has been seized, it must follow that too much discretion was left to the searching officer. There is, to begin with, no support for petitioner's claim that a great number of documents were seized in this case. Indeed, the documents taken from the Church's

bona fide religious organization, and there is substantial doubt,[9] the claim is groundless. If petitioner is arguing that the business office of a church is insulated from a search for stolen property and related materials authorized by a valid warrant, we know of no authority (and petitioner has provided none) to support that proposition. See *Stanford* v. *Texas,* 379 U.S. 476, 485 n. 16. Moreover, to the extent that petitioner suggests that the seizures have inhibited its ability to function, the claim is also insubstantial, since the Church was provided in August 1977 with copies of all seized documents, with the exception of those stolen from the government. Cf. *Heller* v. *New York,* 413 U.S. 483, 492-493. Finally, petitioner's assertion that a search of church property raises problems of rummaging among constitutionally protected material is simply inapposite. The warrant to search the Church's

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offices in the District of Columbia fit into two regular-sized cartons. But more important, petitioner's argument, if accepted, would mean that many complex crimes could be shielded from prosecution merely by utilizing a volume of paper. See *Andresen* v. *Maryland, supra,* 427 U.S. at 481 n. 10.

Petitioner also attaches special significance (Pet. 15) to the fact that the government has indicated that it intends to return to petitioner some of the documents seized. Such a procedure is neither novel nor indicative of any facial invalidity of the warrant. There are many reasons why seized documents are returned and, as with all other questions of fact in this case, no evidence has been taken on the matter.

In *Andresen,* of the 80 files seized from the defendant's business and law offices, the government voluntarily returned 52 and the trial court suppressed an additional 10 "on the ground that there was no connection between them and the crimes charged" (427 U.S. at 467). Only 18 files, or less than 23 percent of the documents seized, were eventually used in the prosecution. This Court did not indicate that that fact had any bearing whatsoever on the question whether the warrant was invalid on its face.

[9]See, *e.g., Founding Church of Scientology* v. *United States,* 412 F. 2d 1197 (Ct. Cl.), certiorari denied, 397 U.S. 1009; *Allard* v. *Church of Scientology,* 58 Cal. App. 3d 439, 129 Cal. Rptr. 797, certiorari denied, 429 U.S. 1091.

property in this case was issued upon an exceptionally strong showing of probable cause to believe that evidence of specified crimes would be found therein. In any event, the court of appeals did not decide whether the search warrant in this case had been executed in a lawful manner. It held only that the warrant was not unconstitutional on its face. Questions concerning the scope and manner of execution of the warrant remain to be resolved on remand to the district court. See Pet. App. 16a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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